REMARKS

REVIEW

The current application sets forth original claims 1 through 35. Claims 16 through 35 have been withdrawn as a result of a restriction requirement. Of the remaining original claims, Claim 1 is the sole independent. Claims 6, 7, and 9 have been cancelled. New Claims 36 through 44 have been added in this amendment, including a new independent claim 41. It is believed that no new matter is presented in these newly added claims.

Presently, no claims have been indicated as allowed in view of the prior art. Claims 1 through 7, 13, 14 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by *Wrezel, et al* (U.S. Patent No. 5,128,162). Claims 8 through 12 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Wrezel et al,* as applied to Claim 7, and in further view of *Vanderspurt et al* (U.S. Patent No. 4,256,675) and *Ergün, et al* (U.S. Pat. No. 6,440,057).

35 U.S.C. §102(b) REJECTION

With respect to the 35 U.S.C. § 102(b) rejection of Claims 1 through 7, 13, and 14, and in view of the significant distinctions discussed herein, Applicants respectfully traverse such ground of rejection with the above amendments and the following remarks. First, Claims 6 and 7 have been cancelled by the above amendments rendering the rejection as to those claims moot. Second, before discussing the references asserted in the Office Action, it is respectfully submitted that controlling case law has frequently addressed rejections under 35 U.S.C. § 102.

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"For a prior art reference to anticipate in terms of 35 U.S.C. Section 102, **every element** of the claimed invention **must** be **identically** shown in a single reference." *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 U.S.P.Q.2d 1315, 1317 (Fed. Cir. 1988)(emphasis added). The disclosed elements must be arranged as in the claim under review. *See Lindemann Machinefabrik v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984) (emphasis added). If any claim, element, or step is absent from the reference that is being relied upon, there is **no** anticipation. *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 230 U.S.P.Q. 81 (Fed. Cir. 1986) (emphasis added). Anticipation under 35 U.S.C. Section 102 requires that there be an **identity of invention**. *See Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 619, 225 U.S.P.Q. 635, 637 (Fed. Cir. 1985) (emphasis added). In PTO proceedings, claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Sneed*, 710 F.2d 1544, 1548, 218 U.S.P.Q. 385, 388 (Fed. Cir. 1983). The following analysis of the present rejections is respectfully offered with guidance from the foregoing controlling case law decisions.

Wrezel et al is directed to a method for removing cholesterol from edible oils, and discloses an apparatus with tanks for providing a fat (Fig.1: 102) and succinic anhydride (Fig.1: 106) to a reaction chamber (Fig. 1: 104). Examiner points to a third tank disclosed in the reference apparatus for providing Na_2CO_3 (Fig. 1: 112); however, this tank is coupled to the apparatus at a point in the process after the reaction, unlike the apparatus set forth in the present claims as amended. Therefore, *Wrezel, et al*, clearly does not teach the arrangement required by

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the claims, as amended, of three tanks which provide reactants to the reaction chamber. Accordingly, the disclosure of *Wrezel et al* is now inadequate to serve as an anticipating reference under § 102. Therefore, it is respectfully submitted that Claims 1 through 5, 13, and 14 are now in condition for allowance, and Applicant earnestly requests that Examiner withdraw this rejection.

35 U.S.C. § 103(a) REJECTIONS

In view of the above amendments and the significant distinctions discussed above, Applicant respectfully traverses such grounds of rejection. By relying on rejection grounds under 35 U.S.C. § 103(a) for alleged obviousness, and by various statements throughout the detailed Office Action, the PTO already acknowledges certain important deficiencies of the base reference, *Wrezel, et al,* which renders such reference inadequate for serving by itself as a rejection basis for any of claims 8 through 12. In addition, in light of the foregoing amendments, there is further distinction between the present claims and *Wrezel, et al*. The secondary references, *Vanderspurt, et al*, and *Ergün, et al,* do not teach or suggest the structures and limitations shown above as lacking in *Wrezel, et al.*

An invention is only obvious under 35 U.S.C. §103(a) if "the subject matter **as a whole** would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." (Emphasis added). The task of proving obviousness is not merely establishing that all of the elements of a claimed invention would have been obvious. It must be shown that the particular combination of elements used to form the

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whole invention would have been obvious. § 103(a). There must be some suggestion, incentive, or motivation to combine the elements **in the manner** as in the claimed invention.

The burden is on the examiner to establish a prima facie case of obviousness. *See* MPEP § 2142. To do so, the examiner must show: (1) some suggestion or motivation to combine the reference teachings; (2) that there is a reasonable expectation of success; and (3) the combination must teach or suggest all the claim limitations of the invention as a whole. *See id.*, (*citing In re Vraek*, 947 F.2d 488 20 USPQ2d 1438 (Fed. Cir. 1991)).

There is no adequate suggestion or motivation to combine *Wrezel, et al* with *Vanderspurt, et al* and *Ergün, et al* in the manner proposed in the office action. The office action suggests that *Vanderspurt, et al* supplies the "cooling jacket" element which the office concedes is missing from *Wrezel, et al.* The office action proposes a purported suggestion to combine *Vanderspurt* with *Wrezel* as follows:

> It would have been obvious to one having ordinary skill in the art at the time of the invention was made to modify the apparatus of the Wrezel reference by including a cooling jacket . . . as taught by the Vanderspurt reference since in order for the centrifugation step to be successful, the temperature in the centrifugation device must be maintained at 25 degrees Celsius.

Office Action, April 17, 2006, p. 4. The suggestion to modify from the prior art is then proposed to be from *Wrezel et al* cited at Col. 7, ll. 34-8 which states, "[l]ow-speed centrifugation (1000Xg for 10 minutes at 25°C) was employed to facilitate separation of the aqueous and oil phases." This section, contrary to Examiner's claim, does not suggest *cooling* the centrifuge to maintain 25°C with any means, much less the use of a the cooling jacket allegedly described in *Vanderspurt et al.* It is well known in the art that centrifuges do not

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transfer heat energy to the substances subjected to centrifugation without some mechanism for rendering a heat transfer. Because 25°C/77°F is only slightly higher than standard laboratory temperature (20° C/68°F), there would likely not be a need to cool the centrifuge at all. Indeed, the cited section is part of Example 1 disclosed in the patent and provides that prior to centrifugation, the untreated solution is at room temperature prior to centrifugation. *Wrezel, et al* Col. 7, ll. 14-15. Therefore, the process in *Wrezel* does not call for the use of cooling means at all around the centrifuge to maintain its temperature as the Examiner has proposed.

It should be noted that the present application claims a cooling jacket about the *reaction chamber*, not about the centrifuge. This configuration is not taught or suggested by the prior art cited. The reaction step of *Wrezel et al* (shown in Fig. 1 at 104 and described in Col. 3, l. 1 through Col., l. 13) is specified to occur at 170° C which would not require cooling at all, but heating.

Accordingly, Applicant respectfully submits that, contrary to Examiner's assertion that *Wrezel et al* provides the required suggestion to cool its centrifuge, the actual centrifugation taught by *Wrezel et al* does not require cooling during centrifugation. As a result, there exists no suggestion or motivation to form the combination proposed by the Examiner. Applicant, therefore, submits that there is no prima facie case of obvious as to the listed claims, and the claims, as amended, are in condition for allowance.

CITED RELEVANT PRIOR ART

It is not believed that any of the prior art cited but not relied upon, alone or in

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combination either with each other or other cited prior art teaches, discloses, suggests or makes obvious the claimed features of the present invention.

CONCLUSION

In view of the foregoing amendments and comments, Applicant respectfully requests withdrawal of the current grounds of rejection and the issuance of a formal Notice of Allowance. The Examiner is invited to telephone the undersigned at his convenience should only minor issues remain after consideration of this amendment in order to permit early resolution of the same.

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any additional fees required under 37 C.F.R. §§ 1.16 and 1.17 to Deposit Account Number 50-0686, in the name of Lanier Ford Shaver & Payne P.C.

MAY 23, 2006

Respectfully submitted,

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